

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7315 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 and 2 Yes. Nos. 3 to 5 No.

PRASHANT JAYANTILAL PATEL

Versus

SUB REGISTRAR AHMEDABAD-2 (WADAJ)

Appearance:

MR MC BHATT for Petitioners

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/97

ORAL JUDGEMENT

The petitioners have come with a case that they have purchased certain land from Respondents Nos. 2 to 7 and they have already paid full consideration in respect of this land situated in village Gota, Survey No.400. In respect of this, sale document no.6165 dated 30.12.1996 was submitted for registration before the Sub-Registrar, Ahmedabad - 2 (wadaaj). The grievance of the petitioners is that this document is not being registered by the Sub-Registrar. The petitioners have stated that Respondents No.2 to 7 intended to back out from the transaction. The petitioners had approached the Land Revenue Authority for mutating their names as owners and occupiers in the government record. It is also the case of the petitioners that the village Accountant posted

Entry No. 2342 dated 19.1.1997 to mutate the petitioners' names as owners and occupiers of this land. It is also stated that the entry was certified by certifying officer on 29.4.1997. It is then stated that the Respondent Nos. 2 to 7 preferred Appeal No.111/97 before the Dy.Collector against Entry No.2342 dated 19.1.1997 but the Dy.Collector decided the matter in favour of Respondent Nos. 2 to 7. The petitioners preferred Appeal No. 165/97 before the District Collector and those proceedings at the instance of the petitioners are pending. It appears that on the basis of the order passed by the Dy.Collector, Respondent Nos. 2 to 7 threatened to disturb the possession of the petitioners and therefore the petitioners preferred Civil Suit No. 732/96 in the Court of Civil Judge (S.D) at Mirzapur-Ahmedabad and sought an interim injunction. According to the petitioners ad-interim relief to maintain status-quo was granted and this order is still operative. It is also stated that the Respondents No. 2 to 7 also instituted a Civil Suit No. 52/97 in the Court of Civil Judge (S.D), Mirzapur praying for the cancellation of the document dated 30.12.1996 i.e. document through which the land is said to have been sold out to the petitioners. On the basis of the disclosures made in the litigation as aforesaid the petitioners have come to know about the communication dated 14.8.1997 sent to the Respondent No.2 by the Sub-Registrar, Ahmedabad -2 (Wadaj), copy of which has been annexed with the petition as Annexure 'D' shows that as per AUDA-9 the land in question is under reservation and therefore the document is pending for registration.

Having come to know about this communication dated 14.8.1997 copy of which has been annexed with the petition as Annexure 'E', an application to obtain certified copy of the order made by the Respondent No.1 in book no.2 as per provisions contained in the Registration Act was made. The learned counsel for the petitioner has made a pointed reference to Sec.71 of the Indian Registration Act, 1908. Averments made in para 8 show that the application moved by the petitioners for the certified copy of the order has not been entertained by the Sub-Registrar and therefore the petitioners are not even in a position to prefer an Appeal under section 72 of the Indian Registration Act. Mr.Bhatt has also argued that Sub-Registrar cannot withhold or refuse the registration of any document with reference to the provision of any other law and he has also argued that even if the land is under reservation as per AUDA there is no ban so far as the transfer of land is concerned and on such ground the Registrar could not withhold or refuse

registration. Mr.Bhatt has made a pointed reference to Section 12(k) and Section 20 of the Gujarat Town Planning and Urban Development Act, 1976. He has submitted that those cases which are covered by Section 12(k) with regard to the draft development plan and the use of the land the consequences which are to follow are provided under Section 20(2). He has argued that the land in question has not been acquired and so far no proceedings for acquisition have commenced and the period of ten years as stipulated under section 20(2) of the Gujarat Town Planning and Urban Development Act, 1976, has not expired and therefore, the petitioners are not in a position to serve notice on the concerned authority for the purpose of acquisition as has been prescribed under section 20(2). The learned counsel for the petitioners has placed strong reliance on a decision of this Court reported in AIR 1982 (Guj) Pg.317 [J.D.Pathak Vs. V.B.Barot]. As per this decision, the registration can be refused either when the document is defective u/S.20(1) or when u/S. 71(2) the document bears the endorsement that the registration is refused meaning thereby the case in which the registration has already been refused earlier. Mr.Bhatt has submitted that none of these two conditions are obtaining in the facts of the present case, and therefore, there is no question of either keeping the document pending or for refusing the registration. Reliance has also been placed on a decision reported in AIR 1986, Punj.& Har. Pg.328 [Krishna Gopal Kataria and another Vs. State of Punjab and others] wherein the Court has held that powers of the Registrar and Sub-Registrar are clearly defined and demarcated and the registration can be refused if the documents are not properly executed or presented or subject matter of the document may lay beyond territorial jurisdiction to the concerned Registrar and that in the Indian Registration Act there is nothing to authorise either the State Government or Registrar to instruct the Sub-Registrar not to register the document. In this case decided by P & H High Court, the plea taken by the State Government that the Farmane-shahi of an ex-Ruler of the State of Patiala prohibiting sales and leases for more than three years of properties belonging to religious/charitable institutions and requiring prior permission of Sardar Sahib Deorhi Mualla was the requirement of law within the meaning of Art.13 of the Constitution and hence was valid and binding, was rejected observing that on the merger of the State of Patiala in the Pepsu (Patiala and East Punjab States Union) the office of the said Sardar remained abolished and the State Government had not authorised any officer to exercise the functions of such office, as a result

whereof there was no authority as on date from whom the managers of the temple properties could seek the permission.

Mr.Bhatt next relied on AIR 1954 RAJ. P. 53 (Vol.41, C.N.25) [Jeevan Ram Vs. State of Rajasthan and another]. In this Division Bench decision the Court was concerned with the question of refusal of registration of the transfer of property. The Court found that the registering officer cannot refuse to register the document except on the grounds mentioned in Section 35(3) or under the provisions of any other law which has been definitely made supplemental to the Registration Act. It has been categorically held that it is not the business of the Registering Officer to see whether a particular document is against any other law in force for the time being if the conditions prescribed for registration under Sections 34 and 35 of the Act or any supplemental law are satisfied. He cannot refuse to register a sale of land by a barber to a Jat on the ground that it contravenes the Notification putting certain restrictions on such transfer of land without permission of Revenue Authorities and it has been held that such notifications are not supplemental law to the Registration Act. However, it has been categorically held that in case registration is refused, remedy is by way of appeal under section 17(B).

In the facts of the present case at best the grievance of the petitioners can be that registration of the document in question is being refused either impliedly or by passing an order, for the reasons which are not permissible under law. Even if this grievance is found to have some substance, remedy clearly lies under section 72 of the Indian Registration Act and the petitioners can prefer appeal against such implied denial or the order. Mr..Bhatt appearing for the petitioners submits that the petitioners cannot even exercise that right of appeal effectively because even their application for supply of the certified copy of the order by which the registration is refused is not being entertained and the Registrar is not supplying copy thereof. He has made reference to the provisions of section 71 of the Indian Registration Act and has submitted that the formal order is required to be passed by the Sub-Registrar for refusing registration in accordance with the particular form as contemplated by section 71.

In the facts and circumstances of the case when the effective remedy lies under section 72 by way of

statutory appeal and when the matter is also pending before the Civil Court at the instance of both the sides, I do not find it a case for interference by this Court and while this petition cannot be entertained for the purpose of issuing a writ of mandamus against the Registrar to register the document in question I deem it proper for the ends of justice to direct the Registrar to supply copy of the order which may have been passed by the Registrar or Sub-Registrar refusing the registration. Should the petitioner send the application for obtaining certified copy of any such order now by Registered Post Acknowledgment Due to the Sub-Registrar, Ahmedabad -2 (Wadaj) and pay appropriate fees for the purpose he shall supply copy of such order, if any, to the petitioners within two weeks from the date of the receipt of such application so as to enable the petitioners to prefer appeal under section 72. In case the Sub-Registrar has not passed any such order, it will be open for him to pass appropriate orders either registering or refusing the registration within a period of two weeks from the date certified copy of this order is served upon him and he shall immediately communicate such order to all concerned.

With the observations and directions as aforesaid this Special Civil Application is hereby disposed of. Direct service is permitted.

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m.m.bhatt